

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

M & I MARSHALL & ILSLEY BANK,

Appellant,

v.

SADER & GARVIN, L.L.C., et al.,

Respondents.

DOCKET NUMBER WD71399

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 31, 2010

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Robert M. Schieber, Judge

APPELLATE JUDGES

Division One: James M. Smart, Jr., Presiding Judge, and Mark D. Pfeiffer
and Cynthia L. Martin, Judges

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

M & I MARSHALL & ILSLEY BANK,)
)
Appellant,)
v.)
)
SADER & GARVIN, L.L.C., et al.,)
)
Respondents.)

WD71399

Jackson County

Before Division One Judges: James M. Smart, Jr., Presiding Judge, and
Mark D. Pfeiffer and Cynthia L. Martin, Judges

M & I Marshall and Ilsley Bank (M&I) appeals the order of the Circuit Court of Jackson County granting Sader & Garvin, L.L.C.'s (S&G) motion to dismiss arbitration. In this interlocutory appeal, M&I argues that (1) the arbitration clause it relies upon was a valid and enforceable contract between the parties, and (2) M&I did not waive its right to seek to compel arbitration. We affirm the trial court's ruling and remand for further proceedings.

AFFIRMED AND REMANDED FOR FURTHER PROCEEDINGS.

Division One holds:

When faced with a motion to compel arbitration, we first consider whether a valid arbitration agreement exists. The problem with M&I's position in this case is that M&I has failed to present any evidence that an agreement to arbitrate was affirmatively entered into between M&I and S&G. Instead, M&I places all of its "eggs in one basket" – namely, M&I claims that S&G has judicially admitted the existence of a valid and binding arbitration agreement in its pleadings. We conclude, however, that S&G's pleadings do not constitute a judicial admission, and consequently, M&I failed to present any evidence that a contract existed.

Opinion by: Mark D. Pfeiffer, Judge

August 31, 2010

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